

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CASEY CUNNINGHAM, ET AL., individually and as representatives of a class of participants and beneficiaries of the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan,

*Plaintiffs,*

v.

CORNELL UNIVERSITY, ET AL.,

*Defendants.*

No. 1:16-cv-6525-PKC-JLC

Hon. P. Kevin Castel

Hon. James L. Cott

**JOINT STIPULATION AND ORDER**

1. On August 17, 2016, Plaintiff Casey Cunningham, on behalf of the Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan (the “Plans”), filed a Complaint against Cornell University and its Retirement Plan Oversight Committee (the “Committee”). Dkt. 1. On December 8, 2016, Plaintiffs Casey Cunningham, Charles E. Lance, Stanley T. Marcus, Lydia Pettis, and Joy Verroneau filed an Amended Complaint against Cornell, the Committee, and Mary G. Opperman (the “Cornell Defendants”), and CAPTRUST Financial Advisors, LLC. Dkt. 38. On February 24, 2017, Plaintiffs filed a Corrected Amended Complaint against these defendants. Dkt. 81.

2. On September 29, 2017, the Court granted in part and denied in part Defendants’ respective motions to dismiss the corrected amended complaint. Dkt. 107.

3. On October 13, 2017, Defendants filed their respective answers and affirmative defenses to the corrected amended complaint. Dkt. 111, 112.

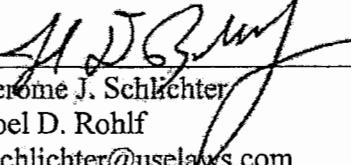
4. Plaintiffs have moved the Court for leave to file a Second Amended Complaint

naming 29 additional individual defendants (the “29 Individuals”) who served on the Committee at various times. Dkt. 132. The Cornell Defendants have opposed the motion, which has been fully briefed and pending before the Court since March 1, 2018. Dkt. 133, 139, 141.

THEREFORE, to avoid any dispute about the propriety or need for Plaintiffs to add the 29 Individuals to this case, and for purposes of this case only, it is hereby stipulated, by and between Plaintiffs and the Cornell Defendants, through their undersigned attorneys, as follows:

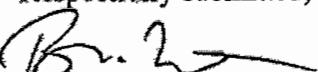
1. Plaintiffs withdraw their motion for leave to file a Second Amended Complaint and shall not thereafter seek to join any of the 29 Individuals as a party to this action.
2. To the extent any of the 29 Individuals would have been liable for breach of fiduciary duty under ERISA, 29 U.S.C. §§ 1132 and 1109, for the claims alleged in the operative Corrected Amended Complaint, and those ERISA fiduciary breach or prohibited transaction claims that may be alleged in any subsequently amended complaint accepted by the Court under the Federal Rules of Civil Procedure, in this lawsuit for conduct between August 17, 2010, through a date determined by the Court as the end of the class period, Cornell shall assume and be responsible for such liability. Cornell’s assumption of liability in this stipulation shall be limited to the 29 Individuals. In making this stipulation, Cornell does not concede that any of the 29 Individuals engaged in any fiduciary activities or had any fiduciary responsibilities.
3. This stipulation is expressly entered into by the parties to avoid Plaintiffs’ naming as defendants in this action the 29 Individuals and shall not foreclose Plaintiffs from seeking to amend the Corrected Amended Complaint for any other purpose. Cornell reserves all rights to object to and oppose any such efforts to amend the Corrected Amended Complaint.

Dated: July 18, 2018

  
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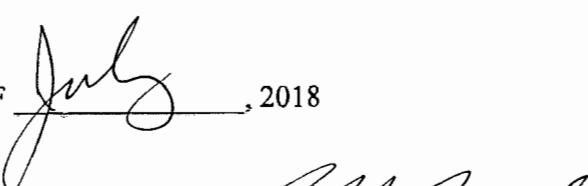
Respectfully submitted,

  
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*Attorney for Cornell Defendants*

SO ORDERED THIS 20<sup>th</sup> DAY OF July, 2018

  
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Hon. P. Kevin Castel  
United States District Judge